

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer OR 35326 WA.

Affirmed.

1. Oil and Gas Leases: Lands Subject to -- Wildlife Refuges and Projects: Leases and Permits

Land within the Columbia National Wildlife Refuge, established by Public Land Order No. 243, qualifies as "wildlife refuge land" and, thus, is subject to the prohibition on oil and gas leasing under 43 CFR 3101.5-1(b) (1983). A noncompetitive oil and gas lease for such land is properly rejected pursuant to the regulation.

APPEARANCES: D. M. Yates, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

D. M. Yates has appealed from the September 9, 1983, decision of the Oregon State Office, Bureau of Land Management (BLM), rejecting noncompetitive oil and gas lease offer OR 35326 WA.

The subject offer described 480 acres as sec. 22, W 1/2; sec. 28, N 1/2 N 1/2, T. 16 N., R. 25 E., Willamette meridian, Grant County, Washington. In its decision BLM stated that the lands in the offer had been "withdrawn by Public Land Order 243 for the protection of all wildlife in the Columbia National Wildlife Refuge system." 1/ BLM concluded that such lands are exempt from oil and gas leasing pursuant to 43 CFR 3103.3-3(a) (1982), except when such lands are subject to drainage. 2/

1/ Public Land Order No. 243, dated Sept. 6, 1944, withdrew certain lands "as a refuge and breeding ground for migratory birds and other wildlife, the reservation to be known as the Columbia National Wildlife Refuge." 9 FR 11400 (Sept. 15, 1944).

2/ Effective Aug. 22, 1983, the Department renumbered the regulations applicable to oil and gas leasing in "wildlife refuge lands" as 43 CFR 3101.5-1 (48 FR 33665 (July 22, 1983)), with no substantive change in content. The current prohibition on oil and gas leasing, except in cases of drainage, is contained in 43 CFR 3101.5-1(b). Id. Although BLM's decision was issued after the effective date of the regulations, it cited 43 CFR 3103.3-3 (1982). The applicable regulation at that time was the new 43 CFR 3101.5-1(b).

The withdrawal applied to "all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws." The applicable regulation, 43 CFR 3101.5-1(b) (1983), provides that no oil and gas leases will be issued "covering wildlife refuge lands," except where the land is subject to drainage.

Appellant does not dispute that the lands in question are covered by Public Land Order No. 243; however, appellant asserts that there is presently a congressional ban on leasing in national wildlife refuges and on the processing of offers to lease. Appellant requests that the offer be suspended "until pending litigation and law suits are settled, at which time appropriate action should then be taken to allow priority status as first qualified applicant in the event mineral leasing is allowed after disposition of pending litigation and moratorium."

[1] It is well established that a noncompetitive oil and gas lease offer is properly rejected to the extent it includes "wildlife refuge lands," pursuant to the prohibition contained in 43 CFR 3101.5-1(b) (1983). See, e.g., D. M. Yates, 73 IBLA 353 (1983); Altex Oil Corp., 73 IBLA 73 (1983). Moreover, the regulatory prohibition represents a formal exercise of the Secretary's discretion under section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982), to permit mineral leasing, apart from any exercise of his withdrawal authority. Therefore, the regulatory prohibition applies regardless of whether the withdrawal itself exempts mineral leasing. T. R. Young, Jr., 20 IBLA 333 (1975).

Land within the Columbia National Wildlife Refuge, established by Public Land Order No. 243, qualifies as "wildlife refuge land" and, thus, is subject to the prohibition on oil and gas leasing under 43 CFR 3101.5-1(b) (1983). D. M. Yates, 80 IBLA 140 (1984). BLM properly rejected appellant's offer in this case. See D. M. Yates, 74 IBLA 159, 161 (1983).

Appellant's request for a suspension of the offer is inappropriate because the regulatory prohibition dictates the result in this case. And, even if the regulatory prohibition were not applicable in this case, the Secretary of the Interior has announced that it is the policy of the Department not to issue oil and gas leases in wildlife refuges outside Alaska, except in cases of drainage. See BLM Instruction Memorandum No. 84-171, Change 1, dated March 22, 1984.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris

We concur: Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

R. W. Mullen
Administrative Judge

